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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 DARRYL WILLIAMS,

13 Defendant.

Case No. 3:99-cr-00161-HDM-RAM
Case No. 3:20-cv-00316-HDM

ORDER

14 The defendant has filed a motion to vacate, correct, or set
15 aside sentence pursuant to 28 U.S.C. § 2255 (ECF No. 40). The
16 government has moved to dismiss. (ECF No. 54). The defendant has
17 opposed (ECF No. 56), and the government has replied (ECF No. 57).

18 The defendant was charged in this action with one count of
19 possession of a firearm by a prohibited person in violation of 18
20 U.S.C. § 922(g)(1) and § 924(a)(2) and one count of bank robbery
21 in violation of 18 U.S.C. § 2113(a). (ECF No. 1). Following his
22 entry of a plea to bank robbery, the defendant was sentenced to
23 165 months in prison. Because the defendant had two prior crimes
24 of violence and his instant offense was also a crime of violence,
25 (PSR ¶ 27), his sentence was based, in part, on his designation as
26 a career criminal. At the time the defendant was sentenced, the
27 Guidelines were mandatory. Judgment of conviction was entered on
28 November 21, 2001, and the defendant did not appeal. (ECF No. 29).

1 On May 28, 2020, the defendant filed the instant § 2255
2 motion. In it, he asserts that his sentence is invalid following
3 the U.S. Supreme Court's decision in *United States v. Davis*, 139
4 S. Ct. 2319 (2019). The government argues that the defendant's
5 motion is untimely and moves to dismiss.

6 Section 2255(f) requires that a motion for relief be filed
7 within one year of the latest of:

8 (1) the date on which the judgment of conviction becomes
9 final;

10 (2) the date on which the impediment to making a motion
11 created by governmental action in violation of the
12 Constitution or laws of the United States is removed, if
the movant was prevented from making a motion by such
governmental action;

13 (3) the date on which the right asserted was initially
14 recognized by the Supreme Court, if that right has been
15 newly recognized by the Supreme Court and made
retroactively applicable to cases on collateral review;
or

16 (4) the date on which the facts supporting the claim or
17 claims presented could have been discovered through the
exercise of due diligence.

18 28 U.S.C. § 2255(f).

19 The defendant filed his motion well more than a year after
20 his judgment of conviction became final - nearly two decades later,
21 in fact. The defendant asserts that his motion is nevertheless
22 timely because it was filed within one year of the Supreme Court
23 recognizing in *Davis* the new right he asserts. *Id.* § 2255(f)(3).

24 In *Davis*, the Supreme Court held that the residual clause of
25 the definition of a "crime of violence" in 18 U.S.C. § 924(c)(3)(B)
26 is unconstitutionally vague. 139 S. Ct. at 2336. The defendant,
27 who was not convicted of a § 924(c) offense, asserts that *Davis*
28 also renders a similar residual clause in the Guidelines definition

1 of crime of violence unconstitutionally vague and that his sentence
2 entered pursuant to those provisions is therefore unlawful.

3 The defendant's argument is foreclosed by *United States v.*
4 *Blackstone*, which binds this court and compels dismissal of the
5 instant petition as untimely. 903 F.3d 1020 (9th Cir. 2018). In
6 *Blackstone*, the defendant asserted that the residual clause of the
7 definition of crime of violence in the then-mandatory Guidelines
8 was unconstitutionally vague following the Supreme Court's
9 decision in *Johnson v. United States*, 576 U.S. 591 (2015). In
10 *Johnson*, the Court had held that the residual clause of the
11 definition of violent felony in 18 U.S.C. § 924(e)(2) was
12 unconstitutionally vague. The Ninth Circuit held that *Johnson* did
13 not recognize the right that *Blackstone* asserted and thus his
14 motion, filed more than a year after his judgment of conviction
15 became final, was not timely. *United States v. Blackstone*, 903
16 F.3d 1020, 1023, 1025-28 (9th Cir. 2018) ("The Supreme Court has
17 not yet recognized the right asserted by *Blackstone*. The Supreme
18 Court has not held that the mandatory Sentencing Guidelines are
19 subject to this vagueness challenge.").

20 The defendant argues that *Blackstone* is clearly
21 irreconcilable with *Davis* and thus is no longer good law. But
22 nothing in *Davis* abrogates the holding relevant to this case, and
23 the Ninth Circuit has repeatedly rejected this same assertion
24 raised by other defendants. *See, e.g., United States v. Saenz*, 833
25 Fed. App'x 697 (9th Cir. Jan. 19, 2021) (unpublished disposition);
26 *United States v. Gray*, 808 Fed. App'x 540, 541 (9th Cir. June 10,
27 2020) (unpublished disposition), *cert. denied*, 141 S. Ct. 1251
28 (2021). *Davis*, like *Johnson*, did not recognize the right the

1 defendant asserts here, and thus the motion cannot be considered
2 timely under 28 U.S.C. § 2255(f)(3).

3 In accordance with the foregoing, IT IS THEREFORE ORDERED
4 that the government's motion to dismiss (ECF No. 54) is GRANTED,
5 and the defendant's motion filed pursuant to 28 U.S.C. § 2255 (ECF
6 No. 40) is hereby DISMISSED.

7 IT IS FURTHER ORDERED that the defendant is DENIED a
8 certificate of appealability, as jurists of reason would not find
9 the court's dismissal of the motion as untimely pursuant to binding
10 circuit law to be debatable or wrong.

11 The Clerk of Court shall enter final judgment accordingly.

12 IT IS SO ORDERED.

13 DATED: This 5th day of May, 2021.

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UNITED STATES DISTRICT JUDGE
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